

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

CHRISTOPHER ALLEN PUNZO,

Plaintiff,

v.

Civil Action No. 2:20-cv-00744

BETSY JIVIDEN, ADMINISTRATOR
(NAME UNKNOWN), TIM KING, and
C.O. BUTCHER,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is plaintiff's motion for preliminary injunction, filed November 16, 2020. ECF No. 3.

On May 18, 2021, United States Magistrate Judge Dwane L. Tinsley filed his Proposed Findings and Recommendation ("PF&R") as to the preliminary injunction motion, recommending that the court deny the motion for preliminary injunction and the plaintiff's requests for declaratory and injunctive relief in his complaint as moot and otherwise leave the matter referred to the Magistrate Judge. ECF No. 10. Plaintiff filed timely objections on June 1, 2021. ECF No. 11.

Upon an objection, the court reviews a PF&R de novo. Specifically, "[t]he Federal Magistrates Act requires a district

court to 'make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made.'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (first alteration added) (quoting 28 U.S.C. § 636(b)(1)).

In his motion, plaintiff, who was temporarily incarcerated at Southwestern Regional Jail ("SWRJ") in Holden, West Virginia, seeks injunctive relief in the form of a requirement that correctional staff at SWRJ be made to wear nametags and that all of his electronic information on the jail's kiosk system and all video footage from October 2, 2020 through October 11, 2020 be preserved. In addition to the injunctive relief requested in the preliminary injunction motion, plaintiff requests in his complaint that "[a]ll acts of Psychological intimidation / threats of Acts of violence stop," "[a]ll use of chemical agents be noted / reported and staff members held accountable for its use or threats of use," and "[a]ll acts of physical force be noted / reported and staff members held accountable for its use or threat of." ECF No. 1 at 5, 7. Based on his notice of change of address, as of at least November 30, 2020, plaintiff is no longer incarcerated at SWRJ. ECF No. 5.

Accordingly, the Magistrate Judge found that plaintiff lacked an ongoing cognizable interest under Article III of the Constitution necessary to sustain a claim for declaratory or injunctive relief in connection with SWRJ. See e.g., Rendellman v. Rouse, 569 F.3d 182, 186 (4th Cir. 2009) ("as a general rule, a prisoner's transfer or release from a particular prison moots his claims for injunctive and declaratory relief with respect to his incarceration there.")

Plaintiff objects, arguing that denial of his motion for preliminary injunction would undermine accountability of the officers involved and that there are those at SWRJ who do not know how to vindicate their rights through the legal system. This objection does not demonstrate a live controversy or legally cognizable interest personal to plaintiff and is overruled.

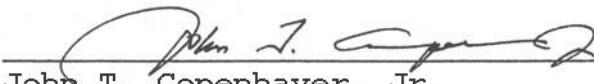
Plaintiff also objects, observing that he needs the evidence he has requested in order to litigate the case. Relief in the form of an injunction or declaratory relief, however, is not the proper vehicle for making discovery requests. Thus, this objection is overruled.

Accordingly, it is ORDERED that:

1. Plaintiff's objections to the PF&R be, and they hereby are, overruled;
2. The findings and recommendation made in the PF&R of the Magistrate Judge be, and they hereby are, adopted by the court and incorporated herein;
3. Plaintiff's motion for preliminary injunction and plaintiff's requests for declaratory and injunctive relief in his complaint are denied as moot;
4. This case remain referred to the Magistrate Judge for any remaining proceedings.

The Clerk is directed to forward copies of this written opinion and order to plaintiff, all counsel of record, and the United States Magistrate Judge.

ENTER: August 13, 2021



John T. Copenhaver, Jr.
Senior United States District Judge